They would certainly not have been in the position they found themselves in when the file was eventually discovered on July 29, 1974. The defendants have only to blame themselves for it. I cannot agree with Mr. Hilborne's submission that only their conduct during the so called critical period between July 29, 1974 and August 7, 1974 has to be looked into to decide whether the defendants had been negligent. I am afraid their conduct over the whole period after the issue of the writ till its expiry comes under scrutiny once they had placed themselves in such a situation.

Having regard to Mr. Hilborne's criticisms of the learned Mr. Justice Chua's decision for setting aside the renewal and service of the writ the defendants' conduct thereafter in remaining silent till September 11, 1975 when the plaintiff called at their office was by no means helpful.

Now there is only the question of damages the plaintiff is entitled to here.

First of all he should get all that he would have received in his claim against the said Lim Ser Hock in Suit 1652/73 had it been successfully proceeded with. It is not in dispute that the plaintiff was free of blame in his traffic accident and so his claim in his action would be based on the basis of that defendant Lim Ser Hock being 100% to blame.

The plaintiff as a result of this accident suffered a bad fracture of the humerus resulting in some disability and limitation in the movement and action of that arm. Having regard to the medical reports concerning his injury and the end result after all the treatment and having considered the evidence of Dr. Balachandran, the Deputy Head of the Orthopaedic Department of the Singapore General Hospital and the awards in comparable cases I assess general damages for pain and suffering and loss of amenities, etc. as a result of this injury at $6,000. I find the plaintiff has proved his claim for special damages for loss or additional expenses incurred in having to employ an additional farm hand to do his work while he was incapacitated at $2,684 and I allow that amount as claimed. I further allow the other 2 agreed items of special damages Hospital fees and Transport at $292 and plaintiff is also entitled to the taxed costs of $2,659.20 cts. with interest at 8% from April 1, 1975 till today, March 7, 1978 amounting to $620 which he has been ordered to pay the said Lim Ser Hock for the interlocutory proceedings in that action.

There shall therefore be judgment for the plaintiff for the total of these sums amounting to $12,255.20 with costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Hilborne & Co.*

LIAN HUAT & CO. (PTE.) LTD. v. MEGAH COMMERCIAL CO.

[O.C.J. (Chua J.) March 28, 1978]
[Singapore — Suit No. 2983 of 1975]

Sale of Goods — Sale of Papua nutmegs — Purchasers' refusal to take unless nutmegs of "international quality" — Surveyor's refusal to issue certificate to that effect — Sellers' claim for damages.

Contract — Agreement to purchase Papua nutmegs — Breach of — Purchasers' refusal to purchase unless nutmegs of "international quality" — Damages, — Sellers' claim for damages — Terms of contract.

The defendants agreed to purchase from the plaintiffs 10 metric tons of Singapore nutmegs BWP by contract AB1 and 40 metric tons of Papua nutmegs BWP and 10 metric tons of Papua nutmegs ABCD by contract AB2. Before contract AB1 was signed a sample of the Singapore nutmegs BWP was shown to the defendants. Contract AB2 was not a sale by sample, but it was agreed by the parties that the "buyers shall nominate their own representative to supervise the quality and weight at seller's store before taking delivery...." Subsequently, the defendants refused to take the nutmegs under AB1 on the ground that they were not of quality and they complained that the nutmegs under contract AB2 were not up to "international quality." A surveyor was appointed to survey Papua nutmegs ABCD and he found that the nutmegs were Papua nutmegs ABCD. The surveyor was, however, not prepared to issue a "Certificate of international quality" as required by the defendants as he had never heard of such a certificate. The defendants refused to take delivery of the nutmegs in the two contracts unless a "Certificate of international quality" was issued. The plaintiffs claimed damages for breach of contract.

During the course of the trial, no evidence was adduced by the defendants as to what "a certificate of international quality" was.

Held, in favour of the plaintiffs: (1) it was clear from the contract AB2 that the defendants agreed to buy Papua nutmegs ABCD and not nutmegs of "international quality";

(2) the defendants' allegations that the nutmegs in the two contracts were not up to quality were not true.

CIVIL SUIT.

Lim Teck Hui for the plaintiffs.

David de Souza for the defendants.

Chua J.: The plaintiffs' claim against the defendants is for damages for breach of contracts.

By a sale contract in writing dated December 3, 1974, the plaintiffs agreed to sell and the defendants agreed to buy 10 metric tons of Singapore nutmegs BWP to be shipped in February, 1975, terms cash against delivery. (Contract AB1).

By another sale contract in writing dated January 9, 1975, the plaintiffs agreed to sell and the defendants agreed to buy 40 metric tons of Papua nutmegs BWP and 10 metric tons of Papua nutmegs ABCD, to be shipped in January/February, 1975, terms cash against delivery. (Contract AB2).

The evidence of the plaintiffs is shortly this. Before the contract AB1 was signed a sample of the Singapore nutmegs BWP was shown to the defendants. At the time the Contract AB1 was signed they had the goods in their store at Kampong Bahru.

Contract AB2 was not a sale by sample, but it was agreed between the parties and endorsed on the contract as follows: "Buyers shall nominate their own representative to supervise the quality and weight at Seller's Store before taking delivery, Sellers do not

guarantee the quality and weight when goods have been cleared from Seller's Store." At the signing of this contract they had the goods in their store.

In January, February and March, 1975, they telephoned the defendants to take delivery. The defendants informed them they could not find cargo space to take delivery and they would call when they found the space.

On April 1, 1975, they wrote to the defendants in respect of the contracts AB1 and AB2 and two other contracts (not the subjects of this suit) informing the defendants that "As we have ready stocks of the above, kindly send to us your shipping instructions in this respect as soon as possible."

The defendants said that they did not have enough cargo space to take the goods in AB2 and asked the plaintiffs to pack only 10 metric tons of Papua nutmeg ABCD. On May 20, 1975, Tan Lian Siauw, the managing partner in the defendant firm, visited the plaintiffs' store and inspected the goods and complained that the goods were not up to "international quality". Tan was told that the plaintiffs did not sell the goods as of "international quality" and it was agreed that a surveyor be appointed to inspect the goods.

On May 21, 1975, J.L. Klassen, a cargo surveyor employed by Independent Agency Pte. Ltd., went to the plaintiffs' store to inspect the goods. There he met Koh Beng Kang, the Managing Director of the plaintiff Company. Klassen was instructed by the plaintiffs to survey "10 tons of Papua Nutmegs, ABCD". Klassen examined the nutmegs and found them to be Papua nutmegs ABCD. After the examination Tan Lian Siauw of the defendant firm arrived. He examined the nutmegs and said that they were not Papua nutmegs ABCD and asked the surveyor to issue a certificate of "international quality". The surveyor had never heard of such a certificate and said that he could not issue it. Klassen told Tan that his findings were that they were Papua nutmegs ABCD. Klassen and Tan argued. Tan wanted Klassen to issue a "Certificate of international quality" and Klassen said he could not. Klassen was prepared to issue a certificate that the nutmegs were Papua nutmegs ABCD and to certify the weight and quality. Tan then went away.

The plaintiffs then instructed their solicitors who wrote to the defendants on May 24, 1975, demanding that the defendants take delivery of the nutmegs in the two contracts AB1 and AB2 and to pay the plaintiffs the total sum of $281,500 in respect of those goods within five days failing which steps would be taken to sue the defendants for damages.

The defendants' solicitors replied on June 4, 1975, stating:

"... our clients will take delivery of the goods specified therein as soon as your clients provide to our clients a certificate from a qualified surveyor appointed by your clients that the goods are of 'international quality' as required of your clients under the terms of their contract with our clients."

The plaintiffs' solicitors replied on June, 13, 1975, as follows:—

"Our clients categorically stated that there has never been an agreement between our respective clients that the goods are of international quality as otherwise it will be stated in the contracts signed between them. We are instructed that your clients are just making this issue with a sole motive to avoid liability.

In view of your clients' attitude our clients have no choice but to take legal proceedings against your clients for the recovery of damages. Kindly let us know whether you have instructions to accept service on behalf of your clients."

When the plaintiffs did not receive any reply from the defendants their solicitors wrote again on June 24, 1975. Again there was no reply from the defendants and the plaintiffs' solicitors wrote on July 3, 1975, claiming damages.

Further correspondence passed between the plaintiffs' solicitors and the defendants' solicitors. Eventually the plaintiffs realised that the defendants were not going to take delivery of the goods and they then commenced the present proceedings.

The defendants' evidence is shortly this. They had two previous dealings with the plaintiffs before December 3, 1974. The first contract was for 30 tons Siauw nutmegs BWP and the other for 10 tons Papua nutmegs ABCD. Both these contracts were in September, 1974. At the time of taking delivery of the 10 tons of Papua nutmegs ABCD they found that the nutmegs were not up to quality and complained to the plaintiffs. They were persuaded to take delivery of the goods on the understanding that the plaintiffs would compensate the defendants for any claim of damages. Subsequently there was a claim by the defendants' German buyers and the defendants informed the plaintiffs who asked them to get the German buyers to reduce the claim. Eventually the claim was reduced to £250 and the plaintiffs agreed to compensate the defendants with this amount. The defendants paid the £250. Due to the present litigation the amount was left unsettled by the plaintiffs.

The defendants denied that as regards the Contract AB1 sample was shown to them.

After the two contracts AB1 and AB2 were signed the defendants requested the inspection of the nutmegs. Tan Lian Siauw was taken by Koh Beng Kang to the plaintiffs' store at the end of January or beginning of February, 1975. There Tan inspected Papua nutmegs BWP and Singapore nutmegs BWP. Tan found that the Papua nutmegs were not up to quality and that the quantity of Singapore nutmegs was small and also not up to quality. Tan did not inspect Papua nutmegs ABCD as the plaintiffs did not have stock of them in the store. Koh told Tan that the plaintiffs were expecting other deliveries of nutmegs and that when they arrived Tan could go and inspect them.

In March, 1975, when Tan Lian Siauw was away in Indonesia the plaintiffs rang up the defendants and asked them to take delivery of 10 metric tons of Papua nutmegs ABCD. A few days later the defendants sent their delivery clerk Lee Ban Teck to the plaintiffs' store. Lee Ban Teck inspected the goods and found them not up to quality and refused to take delivery.

Tan Lian Siauw returned to Singapore on April 4, 1975, and on April 9 he went to the plaintiffs' store. There he saw a heap of Singapore nutmegs BWP and another heap of Papua nutmegs ABCD. He inspected the nutmegs and found them not up to quality.

Tan Lian Siauw then telephoned Koh Beng Kang and complained about the goods not being up to quality and Koh said, "I will sort them out again to your satisfaction."

On April 12 Koh Beng Kang visited Tan Lian Siauw at the latter's request. Tan complained that the goods were not up to quality and Koh replied that there was nothing that he could do about it. Tan then told Koh in that case he could not take delivery of the goods. Tan then asked Koh to sort out 10 tons of Papua nutmegs ABCD and Koh said "alright, we will do it again."

On May 17 the plaintiffs rang up to say that the goods were ready and asked the defendants to send someone to take delivery.

On May 18 the defendants sent their delivery clerk Lee Ban Teck to the plaintiffs' store. Lee inspected the Papua nutmegs ABCD and found that they "were not in accordance with the previous sample." Lee took a pound sample back and showed it to Tan Lian Siauw. Tan found that "they were not those shown to me as samples." Tan telephoned Koh Beng Kang who suggested that the goods be surveyed by a surveyor who could then issue a certificate. Tan told Koh "if the surveyor was prepared to issue the certificate I was prepared to accept the goods."

On May 21, Tan Lian Siauw went to the plaintiffs' store. There he saw the surveyor J.B. Klassen. Koh Beng Kang was not there. The surveyor then surveyed the goods. The surveyor took samples of the nuts. Tan assisted the surveyor by taking samples. The surveyor then weighed a kilo from the samples. The surveyor then briefly felt the nuts in the kilo sample; the surveyor picked out the defective ones. Tan asked the surveyor what was the proportion of the defective nuts; the surveyor counted all the nuts and said the defective nuts formed 12%. The kilo sample contained 205 nuts; twenty-four nuts were defective. The surveyor then telephoned his employer. After the telephone call the surveyor told Tan that his employer told him not to issue the certificate. After that Tan left the store.

There is a conflict of evidence as to what took place at the plaintiffs' store on May 21, 1975, when the surveyor went to survey 10 metric tons of Papua nutmegs ABCD. After considering the evidence I find that the evidence given by the surveyor as to what took place at the store is the more probable version.

Tan Lian Siauw in his examination-in-chief did not mention a word about his asking for a certificate of "international quality". In their letter of June 4, 1975, (written by their solicitors) in reply to the plaintiffs' letter of May 24, 1975, requesting the defendants to take delivery of the goods in contract AB2, the defendants stated that they would take delivery of the goods as soon as the plaintiffs provide them a certificate from a qualified surveyor appointed by the plaintiffs that the goods are of "international quality" as required under the terms of their contract with the defendants. They said that they had asked the plaintiffs for this certificate on several occasions and the plaintiffs had failed to provide the defendants with the required certificate. There was no mention in that letter that the nutmegs were not Papua nutmegs ABCD or that they were not up to quality.

In their letter of July 17, 1975, written by their solicitors the defendants alleged that the surveyor orally confirmed the defendants' finding that the goods did not correspond to the quality specified in the contract and the surveyor refused to issue the certificate certifying the quality. Now, that was not the evidence of Tan Lian Siauw. But in his affidavit sworn to on October 23, 1975, opposing the application of the plaintiffs for liberty to sign interlocutory judgment against the defendants for damages to be assessed, Tan Lian Siauw said that "the defendants had at the time of inspection pointed out to Mr. Leonard (the surveyor) that the goods were not of the quality which would be accepted "internationally" as Papua nutmegs ABCD and the defendants had requested the said Mr. Leonard to issue a certificate confirming that the nutmegs would be acceptable "internationally" i.e. by intending overseas purchasers of the nutmegs from the defendants that the goods were Papua nutmegs ABCD" and that "the said Klassen James Leonard was not prepared at that time to issue a certificate to this effect."

During the course of the trial, counsel for the defendants stated that evidence would be adduced as to what "a certificate of International Quality" was and that such evidence would be forthcoming from Germany. But no such evidence was adduced.

I accept the evidence of the surveyor that the nutmegs he surveyed were Papua nutmegs ABCD but that Tan Lian Siauw insisted that he issue a "Certificate of International Quality" which the surveyor was not prepared to do, not knowing what it was.

It is clear from the contract AB2 that the plaintiffs contracted to sell and the defendants to buy Papua nutmegs ABCD and not nutmegs of "international quality".

I accept the evidence of the plaintiffs that they had the goods sold under contracts AB1 and AB2 in their store and that they were always ready and willing to deliver the goods. I find that it was the defendants who kept off taking delivery of the goods in the two contracts and that their allegations that the goods were not up to quality are not true. These allegations were made by the defendants with the sole purpose of avoiding liability.

There will be judgment for the plaintiffs in the sum of $66,175 damages and interest at the rate of 8% p.a. from June 1, 1975, to date of judgment, and costs.

Judgment for the plaintiffs.

Solicitors: *Lim Teck Hui & Co.; Tang & Tan.*